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1 Bench Opinion by Judge Diane L. Kroupa

2 Feb. 28, 2013

3 Clovus M. Sykes v. Commissioner

4 Docket No. 10386-11L

5 THE COURT: The Court has decided to render
6 oral findings of fact and opinion in this case, and the
7 following represents the Court's oral findings of fact
8 and opinion. These oral findings of fact and opinion
9 shall not be relied upon as precedent in any other
10 case.

11 This bench opinion is made pursuant to the
12 authority granted in section 7459(b) and Rule 152. All
13 section references are to the Internal Revenue Code, as
14 amended, and in effect for the years at issue as later
15 defined, and all rule references are to the Tax Court
16 Rules of Practice & Procedure.

17 This is a collection review case involving a
18 proposed levy and lien action to collect Petitioner's
19 unpaid liabilities for frivolous return penalties under
20 section 6702 for 2001, 2002, 2003, 2004, 2005, and
21 2006, as well as income tax for 2004, 2005, and 2006,
22 collectively the years at issue.

23 Petitioner appeared pro se, and Matthew
24 Carlson appeared on behalf of Respondent.

25 FINDINGS OF FACT

1 The facts of this case are deemed established as set
2 forth in Respondent's stipulation of facts attached to
3 Respondent's motion to show cause under Rule 91(f).

4 The record in this case and the stipulation of facts
5 and exhibits are lengthy and voluminous. We will
6 summarize the facts in this bench opinion.

7 Petitioner resided in California at the time
8 he filed the collection review petition.

9 Petitioner has provided certain services for
10 which he has received non-employee compensation from
11 payors throughout the years at issue. Petitioner was
12 paid for his services and certain payors withheld
13 amounts from Petitioner's income for taxes. The payors
14 issued Petitioner a form 1099-MISC, miscellaneous
15 income, to report the non-employee compensation
16 Petitioner received from that payor for the relevant
17 year.

18 Petitioner has had a consistent pattern of
19 providing the IRS with information on why he has had no
20 requirement to file a return or pay income taxes. For
21 example, he would file a purported 1040 reporting zero
22 on all of the lines for income except interest income
23 and seek a refund of all taxes withheld. Other times
24 or concurrently, he would attach a 4852, substitute for
25 form W-2, a standard fare by which tax protesters

1 reduce or zero out their income.

2 Here, Petitioner argued that no one has shown
3 him where in the Code he has the requirement to file
4 returns and pay income taxes. Petitioner makes his
5 arguments by taking portions of the Code, the
6 Constitution, and the United States Supreme Court
7 ~~cases~~, opinions, out of context. Petitioner uses worn-
8 torn arguments that this Court and other courts have
9 found frivolous and sanctionable.

10 Respondent has warned Petitioner several
11 times orally and several times in writing that he had
12 submitted frivolous tax returns. Petitioner asserts in
13 these various papers submitted to Respondent in
14 connection with this proceeding that he is a citizen,
15 not a taxpayer, of this great country. Petitioner
16 continued to make frivolous arguments in support of his
17 position.

18 Accordingly, Respondent assessed frivolous
19 return penalties under section 6702 against Petitioner
20 and sent notices advising him of the assessments. When
21 Petitioner failed to pay the liabilities, Respondent
22 sent to Petitioner a final notice of intent to levy and
23 notice of your right to a hearing under section 6330.
24 Respondent also sent Petitioner a notice of federal tax
25 lien filing and notice of your right to a hearing under

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1 section 6320.

2 Petitioner timely requested a hearing.

3 Petitioner failed to offer any collection
4 alternatives. Respondent subsequently issued a
5 determination notice upholding Respondent's proposed
6 collection action with respect to Petitioner's
7 liabilities for each of the years at issue. It was
8 later discovered that the settlement officer needed to
9 confirm that the statutory deficiency notices were
10 issued to Petitioner at his last known address.

11 The case was remanded to appeals for a
12 supplemental hearing. Again Petitioner failed to offer
13 any collection alternatives. Respondent issued a
14 supplemental notice of determination concerning
15 collection actions under section 6320 and/or 6330,
16 upholding Respondent's proposed collection actions with
17 respect to Petitioner's liabilities for each of the
18 years at issue.

19 Petitioner timely filed a petition with this
20 Court.

21 At the hearing before this Court, Petitioner
22 acknowledged that his arguments are similar to those
23 espoused in Peter Hendrickson's Cracking the Code: The
24 Fascinating Truth about Taxation in America (Cracking
25 the Code). Petitioner acknowledged, too, that he knew

1 Mr. Hendrickson had been convicted of filing false tax
2 documents and is imprisoned. See United States v.
3 Hendrickson, 2012 WL ~~386475~~ ³⁸⁶³⁷⁵; 460 Fed. Appx. 516 (6th
4 Cir. 2012).

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5 Petitioner distinguished his arguments from
6 those of Mr. Hendrickson who Petitioner referred to on
7 a first-name basis as Pete. The Court warned
8 Petitioner at calendar and at the hearing that he was
9 at risk of having the Court impose a penalty against
10 him under section 6673.

11 (Interruption.)

12 (Discussion was held off the record.)

13 THE COURT: The Court warned Petitioner at
14 calendar call and at the hearing that he was at risk of
15 having the Court impose a penalty against him under
16 section 6673. Petitioner defied the Court and argued
17 that --

18 (Interruption.)

19 THE COURT: Off the record.

20 (Pause.)

21 THE COURT: Petitioner defied the Court and
22 argued that he had not brought this case for delay
23 purposes or that he was raising only frivolous
24 arguments. He filed a 100-plus-page "offer of proof"
25 making the same worn-torn arguments.

1 OPINION

2 Petitioner has followed in the footsteps of numerous
3 others who have unsuccessfully attempted to avoid
4 paying federal income taxes. Petitioner stated that he
5 only is looking for the IRS to provide him the statute
6 or law that requires him to file a return and pay
7 taxes. Simply put, Petitioner questions whether the
8 IRS has authority over citizen Petitioner. Simply put,
9 it does. Secs. 61(a), 6001, 6012, and 6072.

10 Specifically, Petitioner argues that
11 withholding agents/payors are to determine if
12 Petitioner is a US or foreign person under section
13 1441. If he is a US person, as here, then the
14 withholding provisions do not apply. The fallacy with
15 Petitioner's argument is that section 1441 applies to
16 foreign withholding at source rather than withholding
17 under sections 3401 and 3121 that apply to withholding
18 of payments to US citizens. Payments of non-employee
19 compensation are not subject to withholding. Payees
20 like Petitioner, however, are required to report the
21 payments.

22 We begin by noting that we have jurisdiction
23 to review a determination notice under section 6330
24 where the underlying tax liability consists of
25 frivolous return penalties. See Callahan v.

1 Commissioner, 130 TC 44, 47-49 (2008).

2 We also note that Petitioner may contest the
3 frivolous return penalties before ^{this} ~~the~~ Court. See id.
4 at 49-50. DUK

5 We now focus on our standard of review.
6 Where the validity of the underlying tax liability is
7 properly at issue, as the case is here with the
8 frivolous return penalties, we will review the matter
9 de novo. See Callahan v. Commissioner, supra at 50;
10 Sego v. Commissioner, 114 TC 604, 610 (2000). We
11 review all other matters for an abuse of discretion.
12 See Callahan v. Commissioner, supra at 50-51; Sego v.
13 Commissioner, supra at 610.

14 We now turn to the frivolous return
15 penalties. A civil penalty for filing frivolous
16 returns may be assessed against a taxpayer if three
17 requirements are met. First the taxpayer must file a
18 document that purports to be an income tax return.
19 Sec. 6702(a)(1).

20 Second, the purported return must lack the
21 information needed to gauge the substantial correctness
22 of the self-assessment or contain information
23 indicating the self-assessment is substantially
24 incorrect. *Id.* DUK

25 Third, the taxpayer's position must be

1 frivolous or demonstrate a desire to delay or impede
2 the administration of federal income tax laws. Sec.
3 6702(a)(2).

4 We generally look to the face of the
5 documents to determine whether a taxpayer is liable for
6 a frivolous return penalty as a matter of law. See
7 Yuen v. United States, 290 F. Supp. 2d 1220, 1224 (D.
8 Nev. 2003).

9 Petitioner's 1040s or 4852s purported to be
10 income tax returns filed to obtain a tax refund. See
11 Callahan v. Commissioner, supra at 53.

12 Petitioner submitted documents showing zero
13 taxable income from his payors during the years at
14 issue. Respondent has thus satisfied the first
15 requirement.

16 Respondent has satisfied the ~~second~~
17 ~~requirement~~, the second element, as well. Petitioner
18 claimed on the purported returns that Petitioner
19 received no taxable income from the payors during any
20 of the years at issue. These same purported returns,
21 however, indicated that Petitioner's payors had
22 withheld certain taxes on payments made to Petitioner.
23 Petitioner made patently erroneous assertions on these
24 purported returns and therefore they did not contain
25 information on which the substantial correctness of the

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1 self-assessment might be determined.

2 Finally, Respondent has satisfied the third
3 element by showing that the purported returns reflected
4 frivolous positions. Courts have found arguments
5 frivolous when taxpayers argue, as does Petitioner,
6 that payments for services rendered are not taxable.
7 See, e.g., Tornichio v. United States, 263 F.Supp.2d
8 1090 (N.D. Ohio 2002).

9 Petitioner advanced meritless tax protester
10 arguments that are not worthy of further analysis. See
11 Wnuck v. Commissioner, 136 TC ⁴⁹⁸~~493~~ (2011); Crain v.
12 Commissioner, 737 F.2d 1417 (5th Cir. 1984).

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13 We therefore find that Petitioner is liable
14 for the frivolous return penalties under section 6702,
15 because all of the elements have been met.

16 We next address Respondent's determinations in
17 the deficiency notices for 2004, 2005, and 2006, that
18 he owes the taxes determined. Here also, Petitioner
19 has failed to advance arguments or present evidence
20 allowing us to conclude that the determination to
21 sustain the proposed collection action was arbitrary,
22 capricious, or without sound basis in fact or otherwise
23 an abuse of discretion. See, e.g., Giamelli v.
24 Commissioner, 129 TC 107, 112, 115 (2007).

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25 Petitioner did not provide any collection

1 alternatives or present any other defenses. The record
2 indicates that the only issues Petitioner raised
3 through the administrative process and in his petition
4 and correspondence with Respondent were frivolous tax
5 protester arguments. We therefore conclude that
6 Respondent's determination to proceed with the proposed
7 collection actions is not an abuse of discretion.

8 We next determine whether to impose a penalty
9 against Petitioner under section 6673. Section 6673
10 authorizes the Tax Court to require a taxpayer to pay
11 to the United States a penalty up to \$25,000 whenever
12 it appears that proceedings have been instituted or
13 maintained primarily for delay, or that the taxpayer's
14 position in such proceedings is frivolous or
15 groundless. See sec. 6673; *Scruggs v. Commissioner*, TC
16 Memo 1995-355, *affd.* without published opinion, 117
17 F.3d 1433 (11th Cir. 1997).

18 The purpose of section 6673, like that of
19 section 6702, is to compel taxpayers to think and to
20 conform their conduct to settled tax principles. See
21 *Coleman v. Commissioner*, 791 F.2d 68, 71 (7th Cir.
22 1986); see also *Grasselli v. Commissioner*, TC Memo
23 1994-581.

24 Despite numerous warnings from the Court and
25 from Respondent, Petitioner persisted and wasted this

1 Court's limited time and resources. Respondent's
2 counsel recommended that \$5000 would be an appropriate
3 amount, given the facts of this case. The Court
4 thought the recommended amount was too low because the
5 penalty should be substantial if it is to have the
6 desired deterrent effect. Cf. Talmage v. Commissioner,
7 TC Memo 1996-114, affd. without published opinion, 101
8 F.3d 695 (4th Cir. 1996).

9 Petitioner's tactics have consumed valuable
10 government resources. These tactics should not be
11 condoned. They damage the integrity of the federal tax
12 litigation system, because the time and attention the
13 Court and Respondent must devote to these frivolous
14 arguments deprives other taxpayers with genuine tax
15 controversies. See Abrams v. Commissioner, 82 TC 403,
16 412 (1984).

17 We are mindful that Petitioner is
18 representing himself and may not be familiar with all
19 the Court's rules and procedures. Pro se status,
20 however, is not a license to litter the dockets of the
21 federal courts with ridiculous allegations concerning
22 the Code. Parker v. Commissioner, 117 F.3d 785 (5th
23 Cir. 1997).

24 The Court was prepared to impose a
25 substantial penalty under section 6673 against

1 Petitioner, as there were six years at issue, and he
2 has another collection case with this Court, Docket No.
3 18787-12L. We rely upon Respondent's recommendation,
4 however, and shall impose a \$5000 penalty against
5 Petitioner under section 6673(a)(1). Petitioner is
6 warned, however, that the Court will consider imposing
7 a larger penalty if he returns to the Court and
8 advances similar arguments in the future and wastes the
9 Court's and Respondent's limited resources.

10 To reflect the foregoing, decision will be
11 entered for Respondent, and an appropriate order will
12 be issued sustaining the determinations set forth in
13 the supplemental notice of determination concerning
14 actions under section 6320 and/or 6330, upon which this
15 case is based, regarding unpaid tax liabilities for all
16 the years at issue.

17 The order will also reflect that a \$5000
18 penalty under section 6673 will be imposed against
19 Petitioner.

20 This concludes the Court's oral findings of
21 fact and opinion in this case.

22 Off the record.

23 (Whereupon, at 10:17 a.m., the above-
24 entitled matter was concluded.)

25